

THE HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,
Plaintiff,
vs.
MOTOROLA, INC., et al.,
Defendants.
MOTOROLA MOBILITY LLC, et al.,
Plaintiffs,
vs.
MICROSOFT CORPORATION,
Defendants.

Case No. C10-1823-JLR

DECLARATION OF CHRISTOPHER
WION IN SUPPORT OF STIPULATED
MOTION TO SEAL

Noted: Wednesday, May 8, 2013

I, Christopher Wion, hereby declare as follows:

1. I am an attorney at the law firm of Calfo Harrigan Leyh & Eakes LLP, one of the law firms representing Microsoft Corporation ("Microsoft") in the above-captioned matter, and have personal knowledge of the facts stated herein.

2. Attached hereto as Exhibit I-2 is a true and correct copy of Microsoft's April 12, 2013 Supplemental Disclosures Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(i) and (iii) (the "Supplemental Disclosures"), with only limited redactions to those portions of

DECLARATION OF CHRISTOPHER WION IN
SUPPORT OF STIPULATED MOTION TO SEAL

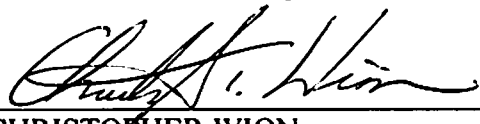
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LAW OFFICES
CALFO HARRIGAN LEYH & EAKES LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

1 page 9 that are considered by Microsoft to be confidential. I understand that the redacted
2 portions of the Supplemental Disclosures disclose confidential business and financial
3 information relating to the relocation of Microsoft's main logistics and products/software
4 distribution center for the European, Middle Eastern and African ("EMEA") market from its
5 location in Germany to the Netherlands in spring 2012 that are not generally known to
6 Microsoft's competitors or competitors of Microsoft's third-party vendors involved in the
7 relocation process.

8 I declare under penalty of perjury under the laws of the United States of America that
9 the foregoing is true and correct.

10 DATED this 8th day of May, 2013 in Seattle, Washington.

11 
12 CHRISTOPHER WION

CERTIFICATE OF SERVICE

I, Linda Bledsoe, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 8th day of May, 2013, I caused the preceding document to be served on counsel of record in the following manner:

Attorneys for Motorola Solutions, Inc., and Motorola Mobility, Inc.:

Ralph Palumbo, WSBA #04751
Philip S. McCune, WSBA #21081
Summit Law Group
315 Fifth Ave. South, Suite 1000
Seattle, WA 98104-2682
Telephone: 206-676-7000
Email: Summit1823@summitlaw.com

____ Messenger
____ US Mail
____ Facsimile
 X ECF

Steven Pepe (*pro hac vice*)
Jesse J. Jenner (*pro hac vice*)
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Telephone: (212) 596-9046
Email: steven.pepe@ropesgray.com
Email: jesse.jenner@ropesgray.com

____ Messenger
____ US Mail
____ Facsimile
 X ECF

Norman H. Beamer (*pro hac vice*)
Ropes & Gray LLP
1900 University Avenue, 6th Floor
East Palo Alto, CA 94303-2284
Telephone: (650) 617-4030
Email: norman.beamer@ropesgray.com

____ Messenger
____ US Mail
____ Facsimile
 X ECF

Paul M. Schoenhard (*pro hac vice*)
 Ropes & Gray LLP
 One Metro Center
 700 12th Street NW, Suite 900
 Washington, DC 20005-3948
 Telephone: (202) 508-4693
 Email: Paul.schoenhard@ropesgray.com

____ Messenger
 ____ US Mail
 ____ Facsimile
 X ECF

Andrea Pallios Roberts (*pro hac vice*)
 Brian C Cannon (*pro hac vice*)
 Quinn Emanuel Urquhart & Sullivan, LLP
 555 Twin Dolphin Drive, 5th Floor
 Redwood Shores, CA 94065
 Telephone: (650) 801-5000
 Email: andreaproberts@quinnemanuel.com
 Email: briancannon@quinnemanuel.com

____ Messenger
 ____ US Mail
 ____ Facsimile
 X ECF

Kathleen M. Sullivan (*pro hac vice*)
 Quinn Emanuel Urquhart & Sullivan, LLP
 51 Madison Ave., 22nd Floor
 New York, NY 10010
 Telephone: (212) 849-7000
 Email: kathleensullivan@quinnemanuel.com

____ Messenger
 ____ US Mail
 ____ Facsimile
 X ECF

William Price (*pro hac vice*)
 Quinn Emanuel Urquhart & Sullivan, LLP
 865 S. Figueroa St., 10th Floor
 LOS ANGELES, CA 90017
 Telephone: 213-443-3000
 Email: williamprice@quinnemanuel.com
MicrosoftvMotoBreachofRANDCase@quinnemanuel.com

____ Messenger
 ____ US Mail
 ____ Facsimile
 X ECF

DATED this 8th day of May, 2013.

s/ Linda Bledsoe
 LINDA BLEDSOE

EXHIBIT I-2

**MICROSOFT CONFIDENTIAL FINANCIAL INFORMATION -
OUTSIDE ATTORNEYS' EYES ONLY - SUBJECT TO PROTECTIVE ORDER**

HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., and MOTOROLA
MOBILITY, INC.,

Defendants

Case No. 2-10-cv-01823-JLR

**MICROSOFT CORPORATION'S
APRIL 12, 2013 SUPPLEMENTAL
DISCLOSURES PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 26(a)(1)(A)(i) and (iii)**

Plaintiff Microsoft Corporation ("Microsoft") hereby provides a supplement to its initial disclosures, pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(i) and (iii). Microsoft provides these supplemental disclosures based on the currently available information and materials. Microsoft reserves the right to supplement these disclosures based on additional information or evidence subsequently identified, discovered, offered, or introduced. Information subject to the attorney-client privilege, work product doctrine, or any other applicable privilege has not been disclosed.

MICROSOFT'S 4/12/13 SUPPLEMENTAL
DISCLOSURES PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 26(a)(1)(A)(i),
(iii) - 1

LAW OFFICES
CALFO HARRIGAN LEYH & EAKES LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL, (206) 623-1700 FAX, (206) 623-8717

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A. Rule 26(a)(1)(A)(i).

1. Current and former employees of Microsoft include, but are not limited to:

a. Horacio Gutierrez
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Mr. Gutierrez is Microsoft's Corporate Vice President and Deputy General Counsel, Intellectual Property and Licensing, and may have knowledge regarding Motorola's license demand letters dated October 21, 2010 and October 29, 2010. Mr. Gutierrez may be contacted through undersigned counsel.

b. Bart Eppenauer
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Mr. Eppenauer is Microsoft's Chief Patent Counsel and may have knowledge regarding the applicable standards and licensing of standards-related patents. Mr. Eppenauer may be contacted through undersigned counsel.

2. Current and former employees of Motorola, Inc., Motorola Mobility, Inc., and General Instrument Corporation likely to have discoverable information on subjects including, but not limited to, the following: Motorola's October 21, 2010 and October 29, 2010 demand letters to Microsoft; Motorola's participation in the adoption and implementation of the WLAN/802.11 and/or H.264 standards; licensing terms offered by Motorola to persons or entities for licenses to Motorola's patented technology it claims is essential to implementation of the WLAN and/or H.264 standards; terms upon which Motorola has accepted licenses from other entities for patented technology necessary for implementation of the WLAN and/or H.264 standards; development of Motorola's allegedly "essential" patents; and Motorola's efforts to protect its allegedly "essential" patents from infringement. Individuals in this category who are likely to have discoverable information include, but are not limited to:

a. Kirk Dailey
c/o Summit Law Group PLLC

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b. Ajay Luthra
c/o Summit Law Group PLLC

3. All individuals likely to have discoverable information listed in Defendants' Initial Disclosures.

4. The following individuals are likely to have discoverable information, or otherwise are likely to know relevant facts about, the standards at issue in this lawsuit, and/or Defendants' commitments to make licenses available on RAND terms:

a. IEEE-SA Standards Board
445 Hoes Lane
Piscataway, NJ 08854
Phone: (732) 981-0060

b. International Telecommunications Union
Place des Nations
1211 Geneva 20
Switzerland
Phone: 41 22 730 5111

Microsoft has not yet identified its testifying expert witnesses but will provide information consistent with the expert witness disclosure deadlines established by the Court and the Federal Rules.

By way of further disclosure, Microsoft also refers to those persons identified in any documents produced or referenced in conjunction with these Initial Disclosures, and to any witness identified in any depositions or answers to discovery by the parties.

Rule 26(a)(1)(A)(i): April 12, 2013 Supplemental Disclosures

Microsoft expects to rely on one or more of the following fact witnesses to provide testimony at trial regarding the subject matter identified below. Each potential witness may be contacted through undersigned counsel.

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1
2 a. David Killough
3 Assistant General Counsel
4 Microsoft Corporation
5 One Microsoft Way
6 Redmond, WA 98052

7 Mr. Killough is expected to testify at trial regarding Microsoft's damages, including
8 the attorneys' fees and litigation costs and expenses incurred by Microsoft in connection with
9 the 1823 Action, 343 Action, 700 Action, ITC Action and the German Actions (all as defined
10 below).

11 b. Jeff Davidson
12 General Manager, Global Supply Chain Operations
13 Microsoft Corporation
14 One Microsoft Way
15 Redmond, WA 98052

16 Mr. Davidson is expected to testify at trial regarding, among other things, the costs
17 associated with relocation of Microsoft's EMEA operations from Germany to the Netherlands
18 in 2012. Mr. Davidson also has knowledge regarding Microsoft's decision to relocate
19 Microsoft's EMEA operations from Germany to the Netherlands in spring 2012, as well as
20 operational aspects of Microsoft's EMEA distribution network.

21 c. Jon DeVaan
22 VP of Development for Windows
23 Microsoft Corporation
24 One Microsoft Way
25 Redmond, WA 98052

Mr. DeVaan is expected to testify at trial regarding, among other things, relevant
features and functionality provided by Microsoft software, including but not limited to
Windows. Mr. DeVaan may also be called to testify at trial regarding the extent of the
financial and non-economic harm generally associated with Motorola's threat of an injunction
and related wrongful conduct in relation to its claimed H.264 Standard Essential Patents and
that which Microsoft would have suffered had the German Injunction (as defined below)
become effective.

d. Leo Del Castillo
General Manager, Xbox Hardware Development
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

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1 Mr. Del Castillo is expected to testify at trial regarding, among other things, relevant
2 features and functionality included in Microsoft products, including the Xbox 360, as well as
3 the technical complexities and commercial difficulties associated with the design and
4 development of Xbox products in relation to standard-compliant technology.

5 e. Marcello Prieto
6 Senior Director, Volume Licensing Programs
7 Microsoft Corporation
8 One Microsoft Way
9 Redmond, WA 98052

10 Mr. Prieto is a possible trial witness, who may be called to testify regarding the extent
11 of the financial and non-economic harm that Microsoft would have suffered had the German
12 Injunction become effective, particularly as it relates to Microsoft's volume licensing
13 programs.

14 f. Josh Hutto
15 Director of Platform Marketing, IEB Global Marketing
16 Microsoft Corporation
17 One Microsoft Way
18 Redmond, WA 98052

19 Mr. Hutto is a possible trial witness, who may be called to testify regarding the extent
20 of the financial and non-economic harm that Microsoft would have suffered had the German
21 Injunction become effective, particularly as it relates to Microsoft's Xbox 360 console,
22 services, games and accessories.

23 Microsoft also incorporates by reference the witness disclosures set forth in the
24 proposed Pretrial Order jointly submitted by the Parties on October 24, 2012.

25 **C. Rule 26(a)(1)(A)(iii).**

Microsoft claims its damages arising out of Defendants' breaches of their contractual
commitments to the IEEE-SA, ITU-T, and Microsoft, as well as Microsoft's damages arising
out of its reliance on Defendants' promise that they would license any essential patents on
RAND terms and conditions. Microsoft also seeks injunctive and declaratory relief. Without
the benefit of discovery, Microsoft is not able at this time to provide a computation of
damages, but will seek all damages available under law. Microsoft's damages include those

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that it has suffered as a result of defending against Defendants' actions in the District Court for the Western District of Wisconsin and before the ITC to enjoin or exclude Microsoft from practicing the WLAN/802.11 and H.264 standards.

Rule 26(a)(1)(A)(iii): April 12, 2013 Supplemental Disclosures

Microsoft incorporates by reference its responses to Defendants' Interrogatory Nos. 3 and 4, as supplemented on April 3, 2013. Microsoft also incorporates by reference the evidence presented during the November 2012 RAND trial in the above-captioned matter.

In further response, Microsoft states that the damages it will be seeking at the breach of contract trial scheduled to begin on August 26, 2013, include certain costs and expenses incurred by Microsoft as a result of Defendants' breaches of contract, including in connection with the following actions:

- The above-captioned matter, Case No. 2-10-cv-01823-JLR (the "1823 Action").
- *Motorola Mobility, Inc. and General Instrument Corporation v. Microsoft Corporation*, Case No. 3:10-cv-699, District Court for the Western District of Wisconsin, filed on November 10, 2010, subsequently assigned Case No. 2:11-cv-00343-JLR upon transfer to this Court on February 28, 2011 (the "343 Action") and consolidated with the 1823 Action.
- *Motorola Mobility, Inc. and General Instrument Corporation v. Microsoft Corporation*, Case No. 3:10-cv-700, District Court for the Western District of Wisconsin, filed on November 10, 2010 (the "700 Action").
- *In the Matter of Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof*, International Trade Commission ("ITC") Case No. 337-TA-752, filed on November 22, 2010 (the "ITC Action").
- The "German Actions" consisting of (a) the following four consolidated actions filed on July 6-7, 2011, in the German regional court located in Mannheim, Germany: *General Instrument Corporation v. Microsoft Deutschland GmbH*, Case No. 2 O 240/11; *General Instrument Corporation v. Microsoft Deutschland GmbH*, Case No. 2 O 373/11; *General Instrument Corporation v. Microsoft Corporation and Microsoft Ireland Operations Ltd.*, Case No. 2 O 376/11; *General Instrument Corporation v. Microsoft Ireland Operations Ltd.*, Case No. 2 O 387/11, and (b)

MICROSOFT'S 4/12/13 SUPPLEMENTAL
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(iii) - 6

LAW OFFICES
CALFO HARRIGAN LEYH & EAKES LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

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Microsoft Corp. v. General Instrument Corp., (Case No. 5 Ni 62/11) (Federal Patent Court of Germany); *Microsoft Corp. v. General Instrument Corp.*, (Case No. 5 Ni 63/11) (Federal Patent Court of Germany).

The monetary relief Microsoft seeks for the damages it has suffered in connection with the 1823 Action, 343 Action, 700 Action, ITC Action, and the German Actions as a result of Defendants' breaches of contract broadly falls into two categories.

The first category of monetary damages sought by Microsoft consists of the attorneys' fees and other litigation costs and expenses that Microsoft incurred as a consequence of Defendants' breaches of contract. In particular, as a result of Defendants' breaches of contract, Microsoft incurred fees and related litigation expenses (including expert costs) in connection with the services provided by the following law firms engaged to represent Microsoft in the 1823 Action, 343 Action, 700 Action, ITC Action and German Actions:

- Sidley Austin LLP.
- Freshfields Bruckhaus Deringer.
- Boehmert & Boehmert.
- Klarquist Sparkman, LLP.
- Calfo Harrigan Leyh & Tollefson, LLP (formerly DHLT, LLP).
- Michael Best & Friedrich, LLP.

Microsoft is not seeking to recover the full amount invoiced by all law firms for every aspect of the relevant actions listed above. Microsoft is in the process of reviewing and redacting potentially relevant invoices in order to identify and segregate the items for which it seeks recovery. Given the number of law firms and legal actions involved and the considerable volume of invoices generated from the time Microsoft received Motorola's October 2010 demand letters to the present, this has proven to be a time-consuming process. Microsoft expects to conclude this process by the week of April 15. Calculation of the total dollar

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1 amount of the damages in this category is expected to require expert analysis of the relevant
2 invoices once this process is complete.

3 Supporting documentation for certain of the above-described damages already has been
4 produced at Bates range MS-MOTO_1823_0006000001 – MS-MOTO_1823_0006000131.
5 Additional supporting documentation, including the remainder of the invoices referenced
6 above, is being reviewed and processed and will be produced on a rolling basis, as it becomes
7 available.

8 The second main category of monetary damages sought by Microsoft consists of the
9 cost of measures taken to mitigate losses anticipated from the potential award of the injunctive
10 relief that Defendants sought in Germany. The relief Defendants sought was an order
11 enjoining Microsoft from (a) offering, distributing, using or importing its Xbox 360 game
12 console in Germany and (b) offering or supplying its software products that support decoding
13 according to the H.264 standard in Germany, including Microsoft's Windows 7 operating
14 system software. In fact, such an order was issued in Germany on May 2, 2012 (the "German
15 Injunction").

16 Had the German Injunction become effective, Microsoft would have suffered
17 significant financial and non-economic harm, as partially described in Microsoft's filings in
18 support of its March 28, 2012, Motion for TRO and Preliminary Injunction, including the
19 declarations of Peter Chrocziel, Josh Hutto and Marcelo Prieto (*see* Dkt. Nos. 209-217).

20 Microsoft took reasonable steps to mitigate the enormous financial and non-economic
21 harm it would have suffered had the German Injunction become effective. These steps
22 included relocating its main logistics and products/software distribution center for the
23 European, Middle Eastern and African ("EMEA") market from its location in Germany to the
24 Netherlands in spring 2012.

25 MICROSOFT'S 4/12/13 SUPPLEMENTAL
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(iii) - 8

LAW OFFICES
CALFO HARRIGAN LEYH & EAKES LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

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Supporting documentation for certain of the above-described damages already has been produced at Bates range MS-MOTO_1823_00004081413 – MS-MOTO_1823_00004081541. Additional supporting documentation is being gathered, reviewed and processed and will be produced on a rolling basis, as it becomes available.

Reservation of Rights.

Microsoft's supplemental disclosures are based upon a good-faith effort to obtain information reasonably available to it at this time. Microsoft reserves the right to further

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1 supplement these disclosures as additional information and materials are identified and become
2 available.

3 DATED this 12th day of April, 2013.

4 CALFO HARRIGAN LEYH & EAKES LLP

5
6 By s/ Christopher Wion

7 Arthur W. Harrigan, Jr., WSBA #1751

8 Christopher Wion, WSBA #33207

9 Shane P. Cramer, WSBA #35099

10 999 Third Avenue, Suite 4400

11 Seattle, WA 98104

12 Phone: 206-623-1700

13 arthurlh@calfoharrigan.com

14 chrisw@calfoharrigan.com

15 shanec@calfoharrigan.com

16 T. Andrew Culbert

17 David E. Killough

18 MICROSOFT CORPORATION

19 1 Microsoft Way

20 Redmond, WA 98052

21 Phone: 425-882-8080

22 Fax: 425-869-1327

23 David T. Pritikin

24 Richard A. Cederoth

25 Constantine L. Trela, Jr.

William H. Baumgartner, Jr.

Ellen S. Robbins

Douglas I. Lewis

David C. Giardina

John W. McBride

David Greenfield

SIDLEY AUSTIN LLP

One South Dearborn

Chicago, IL 60603

Phone: 312-853-7000

Fax: 312-853-7036

92 MICROSOFT'S 4/12/13 SUPPLEMENTAL
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(iii) - 10

LAW OFFICES
CALFO HARRIGAN LEYH & EAKES LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

**MICROSOFT CONFIDENTIAL FINANCIAL INFORMATION -
OUTSIDE ATTORNEYS' EYES ONLY - SUBJECT TO PROTECTIVE ORDER**

Carter G. Phillips
Brian R. Nester

SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
Telephone: 202-736-8000
Fax: 202-736-8711

Counsel for Microsoft Corp.

MICROSOFT'S 4/12/13 SUPPLEMENTAL
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(iii) - 11

LAW OFFICES
CALFO HARRIGAN LEYH & EAKES LLP
999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL. (206) 623-1700 FAX. (206) 623-8717

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CERTIFICATE OF SERVICE

I, Linda Bledsoe, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.
2. On the 12th day of April, 2013, I caused the preceding document to be served on counsel of record in the following manner:

Attorneys for Motorola Solutions, Inc., and Motorola Mobility, Inc.:

Ralph Palumbo, WSBA #04751
Philip S. McCune, WSBA #21081
Summit Law Group
315 Fifth Ave. South, Suite 1000
Seattle, WA 98104-2682
Telephone: 206-676-7000
Email: Summit1823@summitlaw.com

____ Messenger
____ US Mail
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 X Email

Steven Pepe (*pro hac vice*)
Jesse J. Jenner (*pro hac vice*)
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Telephone: (212) 596-9046
Email: steven.pepe@ropesgray.com
Email: jesse.jenner@ropesgray.com

____ Messenger
____ US Mail
____ Facsimile
 X Email

Norman H. Beamer (*pro hac vice*)
Ropes & Gray LLP
1900 University Avenue, 6th Floor
East Palo Alto, CA 94303-2284
Telephone: (650) 617-4030
Email: norman.beamer@ropesgray.com

____ Messenger
____ US Mail
____ Facsimile
 X Email

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999 THIRD AVENUE, SUITE 4400
SEATTLE, WASHINGTON 98104
TEL, (206) 623-1700 FAX, (206) 623-8717

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1 Paul M. Schoenhard (*pro hac vice*)
2 Ropes & Gray LLP
3 One Metro Center
4 700 12th Street NW, Suite 900
5 Washington, DC 20005-3948
6 Telephone: (202) 508-4693
7 Email: Paul.schoenhard@ropesgray.com

____ Messenger
____ US Mail
____ Facsimile
 X Email

5 William Price (*pro hac vice*)
6 Brian Cannon (*pro hac vice*)
7 Andrea Pallios Roberts (*pro hac vice*)
8 Quinn Emanuel
9 555 Twin Dolphin Drive, 5th Floor
10 Redwood Shores, CA 94065-2139
11 MicrosoftvMotoBreachofRANDCase@quinnemanuel.com

____ Messenger
____ US Mail
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 X Email

12 DATED this 12th day of April, 2013.

13 s/ Linda Bledsoe
14 LINDA BLEDSOE